

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3. California Code of Regulations

Adopt the following regulation text:

Article 2.1. Administrative Civil Penalty Guidelines

1371. Notice of Proposed Action and Disposition

(a) Before a civil penalty is levied pursuant to Section 43003 or Section 885 of the California Food and Agricultural Code, the person charged with the violation shall receive written notice of the proposed action including the nature of the violation and the amount of the proposed penalty. The person shall be allowed to review any evidence related to the matter that is in the possession or control of the county agricultural commissioner or the Department of Food and Agriculture. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice may be served to the person charged by registered mail to the address provided on the person's licensing, registration, and/or certification on file with the county agricultural commissioner or the Department of Food and Agriculture. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the commissioner's evidence and the person shall be allowed to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(1) The hearing shall be conducted and a decision rendered by an unbiased hearing officer who has not served as an investigator, prosecutor or advocate at any stage of the proposed action.

(2) The decision shall be based only upon evidence presented to the hearing officer during the hearing. A record shall be made of the proceedings.

(b) When a respondent in an administrative action agrees to pay the proposed penalty, a signed agreement with the payment of the proposed administrative penalty shall be returned to the county agricultural commissioner within 45 days of the postmark of the notice of proposed action.

(c) If an administrative hearing is requested, a final decision and order shall be made by a hearing officer within 60 days of the conclusion of the hearing. This order will be mailed to the address provided by the respondent. Any penalty imposed shall be due and payable within 45 days of the postmark of such order, unless the respondent timely files a written appeal to the secretary.

(d) If the person upon whom the commissioner levied a civil penalty requested and appeared at a hearing, the person may appeal the commissioner's decision to the secretary within 10 days of the date of receiving a copy of the commissioner's decision, pursuant to the procedures provided in Section 43003(e) of the California Food and Agricultural Code.

Note: Authority cited: Sections 401, 407, and 42681, Food and Agricultural Code.

Reference: Sections 885, and 43003, Food and Agricultural Code.

### 1371.1 Penalty Guidelines.

In applying Section 885 and Section 43003 of the California Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and amount of the penalty.

(a) For the purposes of this section, violation classes are designated as "Serious", "Moderate" and "Minor".

(1) "Serious". Violations which preclude or significantly interfere with enforcement, or those which cause significant false, misleading or deceptive business practices; or repeat violations of sub-paragraph (2) that occurred within a two-year period and which resulted in an action and subsequent penalty.

(2) "Moderate". Violations which undermine enforcement, or those in which there is a potential for intermediate level of consumer or competitive harm; or repeat violations of sub-paragraph (3) that occurred within a two-year period and which resulted in an action and subsequent penalty.

(3) "Minor". Violations that have minimal adverse effect on consumers or equitable competition in the marketplace.

(b) Table A shall be used to establish the level of severity of a particular violation and the corresponding penalty range for "Serious", "Moderate" and "Minor" violation classes. Except where specific violation parameters are provided, the violation column in Table A is an abbreviated description of the corresponding section in the California Food and Agricultural Code, Division 1, Chapter 8. Agriculture Theft Prevention; and Division 17. Fruit, Nut and Vegetable Standards.

Note: Authority cited: Sections 401, 407, and 42681, Food and Agricultural Code.

Reference: Sections 885, and 43003, Food and Agricultural Code.

## 1371.2. Administrative Civil Penalties for Food and Agriculture Violations

Table A

Section I – Provisions of Division 1 and of Division 17 Not Separately Specified

For a first violation, a fine of not more than \$500.

For a second or subsequent violation, a fine not less than \$100 or more than \$1,000

<u>Code Section</u>	<u>Description of Violation</u>	<u>Minor Violation</u> \$50 - \$150	<u>Moderate or Subsequent Violation</u> \$151 - \$500	<u>Serious or Subsequent Violation</u> \$501 - \$1,000
1. FAC 861	Failure of seller to provide, buyer to obtain, or transporter to possess a record showing proof of ownership		X	
2. FAC 862	Failure to make proof of ownership available for inspection; failure to include required information in the record		X	
3. FAC 864	Falsification of any information in a record intended to show proof of ownership		X	
4. FAC 865	Failure to retain a copy of the record for a period of 60 days after delivery	X		
5. FAC 42792.1	Unlawful use of a county certification stamp or device		X	
6. FAC 42884	Delivery of fruits, nuts or vegetables under disposal order to other than designated destination		X	
7. FAC 42885	Disposal of fruits, nuts or vegetables under disposal order prior to release		X	
8. FAC 42886	Disposal of fruits, nuts or vegetables under disposal order in a manner or for a purpose other than as ordered		X	
9. FAC 42941	Failure of fruits, nuts or vegetables to conform to provisions of this division or regulations promulgated thereto	X *Second violation of same regulation		
CCR 1359	Container labeling: no declaration of responsibility		X	
10. FAC 42942	Deceptive pack, lot load or display of fresh or dried fruits, nuts or vegetables			
11. FAC 42943	Mislabeling or misleading statement on container or label	X		
12. FAC 42944	Deceptive or misleading statements in any manner	X		
13. FAC 42946	Failure to pack the same numerical count in each layer	X		
14. FAC 42947	Failure to ensure that the contents of lower layers are of			

	<u>same kind, quality and proportion as top or exposed layers</u>	<u>X</u>		
<u>15. FAC 42950</u>	<u>Failure of 90% to be free of insect injury, worms, mold or decay (specific standards not otherwise established)</u>	<u>X</u>		
<u>16. FAC 43033</u>	<u>Removal of tag or notice from lot under abatement</u>		<u>X</u>	
<u>17. FAC 43331</u>	<u>Use or disposal of fruits, nuts or vegetables under permit other than by the manner or for the purpose permitted</u>		<u>X</u>	
<u>18. FAC 43332</u>	<u>Failure of permit to accompany fruits, nuts or vegetables transported under permit</u>	<u>X</u>		
<u>19. FAC 43333</u>	<u>Selling or offering fruits, nuts or vegetables failing to meet standards to person requiring permit who has no permit</u>	<u>X</u>		

Section II – Provisions of Division 17 Separately Specified  
For a first violation, a fine of not more than \$3,000

<u>Code Section</u>	<u>Description of Violation</u>	<u>Moderate Violation</u> <u>\$250 - \$1,000</u>	<u>Serious or Subsequent Violation</u> <u>\$1,001 - \$3,000</u>
<u>1. FAC 42945</u>	<u>Unlawful removal or disposal of fruits, nuts or vegetables with warning tag or notice attached or removal of tag or notice without written permission or under direction of enforcing officer</u>	<u>X</u>	
<u>2. FAC 42948</u>	<u>Refusal to submit fruits, nuts or vegetables to inspection of enforcing officer</u>	<u>X</u>	
<u>3. FAC 42949</u>	<u>Alteration of certificate of inspection, notice of violation, report, statement, or other document issued by an enforcing officer</u>		<u>X</u>
<u>4. FAC 42951</u>	<u>Adulteration of any solution or chemical or alteration of any instrument or device provided to an enforcing officer for use in determining compliance with this division</u>		<u>X</u>

AVOCADOS

<u>5. FAC 44971(b)</u>	<u>Failure to certify avocados as complying with maturity and quality provisions established by regulation</u>	<u>X</u>	
<u>6. FAC 44972</u>	<u>Unlawful shipment or sale of any container of avocados which does not bear the official stamp required by law and regulation</u>	<u>X</u>	
<u>7. FAC 44974(c)</u>	<u>Failure to comply with the inspection and certification requirements of FAC Chapter 9, Avocados</u>	<u>X</u>	
<u>8. FAC 44986</u>	<u>Unlawful use of avocado container certification stamp; refusal to surrender certification stamp to director's authorized agent; counterfeit or alter or use any altered certification stamp</u>		<u>X</u>

Section III – Provisions of Division 17 Separately Specified – Avocados Only  
Avocados Worth \$500 or More  
For a first violation involving avocados worth \$500 or more, or  
For a second or subsequent violation, a fine not less than \$250 or more than \$5,000

<u>Code Section</u>	<u>Description of Violation</u>	<u>Moderate Violation</u> \$250 - \$1,000	<u>Serious or Subsequent Violation</u> \$1,001 - \$5,000
1. FAC 44973	Packing, handling or selling any lot of avocados not in compliance with maturity and quality standards established by regulation	<u>X</u>	
2. FAC 44982	Failure of avocado handler to prepare and retain for two years up-to-date records of daily transactions; failure to include required information in records	<u>X</u>	
3. FAC 44983	Falsification of record or information required to be kept pursuant to FAC 44982		<u>X</u>
4. FAC 44984	Failure to allow inspection of records required to be kept pursuant to FAC 44982		<u>X</u>
5. FAC 45031	Failure to possess a record of proof of ownership for avocados	<u>X</u>	
6. FAC 45034	Falsification of any information in a record intended to show proof of ownership for avocados		<u>X</u>
7. FAC 45035	Failure to retain a copy of the proof of ownership record for avocados for one year after sale	<u>X</u>	

Section III – Provisions of Division 17 Separately Specified – Avocados Only  
Avocados Worth Less Than \$500  
For a first violation for avocados worth less than \$500, a fine of not more than \$500  
For a second or subsequent violation, a fine not less than \$250 or more than \$5,000

<u>Code Section</u>	<u>Description of Violation</u>	<u>Moderate Violation</u> \$100 - \$250	<u>Serious or Subsequent Violation</u> Initial: \$251-\$500 Subsequent: \$251-\$5,000
1. FAC 44973	Packing, handling or selling any lot of avocados not in compliance with maturity and quality standards established by regulation	<u>X</u>	
2. FAC 44982	Failure of avocado handler to prepare and retain for two years up-to-date records of daily transactions; failure to include required information in records	<u>X</u>	
3. FAC 44983	Falsification of record or information required to be kept pursuant to FAC 44982		<u>X</u>
4. FAC 44984	Failure to allow inspection of records required to be kept pursuant to FAC 44982		<u>X</u>
5. FAC 45031	Failure to possess a record of proof of ownership for avocados	<u>X</u>	

6. <u>FAC 45034</u>	<u>Falsification of any information in a record intended to show proof of ownership for avocados</u>		<u>X</u>
7. <u>FAC 45035</u>	<u>Failure to retain a copy of the proof of ownership record for avocados for one year after sale</u>	<u>X</u>	

Note: Authority cited: Sections 401, 407, and 42681, Food and Agricultural Code.

Reference: Sections 861, 862, 864, 865, 42792, 42884, 42885, 42886, 42941, 42942, 42943, 42944, 42945, 42946, 42947, 42948, 42949, 42950, 42951, 43033, 43331, 43332, 43333, 44971, 44972, 44973, 44974, 44982, 44983, 44984, 44986, 45031, 45034, and 45035, Food and Agricultural Code.